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C O N F I D E N T I A L SECTION 01 OF 02 PRAGUE 000532

SIPDIS

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TAGS: [PGOV](#) [EZ](#)

SUBJECT: CZECH ELECTION TURMOIL: WHAT CAUSED THIS MESS?

REF: A. PRAGUE 523

[1](#)B. PRAGUE 527

Classified By: Acting Deputy Chief of Mission John Law for reasons 1.4  
(b) and (d).

[1](#)1. (C) Summary: The turmoil surrounding the date of Czech elections was generated by a legal complaint alleging that the law Parliament passed to call early elections is unconstitutional. The Czech Constitution provides four procedures for dissolving the Chamber of Deputies and calling early elections. Following the fall of the government coalition in March 2009, Parliament used a procedure that had been used before without a challenge, and that is quicker than the constitutional methods -- but is not specifically authorized in the Constitution. The heart of the complaint is that the procedure is not permitted because it is not in the Constitution, and that the law subverts the democratic process. Regardless of the legal merits, part of the election uproar is rooted in a focus on political expediency.  
End Summary.

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The Topolanek Government's Fall  
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[1](#)2. (U) When the coalition government led by Mirek Topolanek's Civic Democrats (ODS) fell in March 2009, the Czechs needed a new government. The problem was partly solved by an agreement among political parties to install a caretaker, temporary government, led by Prime Minister (and former head of the Czech Statistical Office) Jan Fischer. Parliament addressed the need for a permanent government by voting to shorten the term of the current Chamber of Deputies and calling for elections by October 15. President Klaus signed the bill into law in June, and on July 1 announced the election dates of October 9-10.

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What the Constitution Permits  
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[1](#)3. (U) The Constitution of the Czech Republic, adopted in 1993, provides four methods to dissolve the Chamber of Deputies and call early elections. The Constitution allows the President to dismiss the Chamber if:

-- 1) the Chamber of Deputies passes a vote of no-confidence in a newly appointed government whose prime minister was appointed by the president on the suggestion of the chairman of the Chamber (under the Constitution, this scenario would occur after two failed attempts to form a government);  
-- 2) the Chamber fails to decide within three months on a government bill related to a question of confidence;  
-- 3) a session of the Chamber is adjourned for a longer period than permissible (120 days); or  
-- 4) the Chamber has not reached a quorum for a period longer than three months, although its session was not adjourned and although it was repeatedly called to session during this period.

¶4. (U) According to Jiri Leschtina, a respected center-right commentator for the newspaper Hospodarske Noviny, the authors of the Constitution intentionally made dissolving the Chamber difficult to prevent thoughtless and routine toppling of governments. Karel Klima, Chair of the West Bohemian University Constitutional Law Department, for example, opposes efforts to make it easier to dissolve the Chamber, stating that this should be an exceptional occurrence to promote Constitutional stability.

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Law Was a Quick Solution Not in the Constitution  
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¶5. (SBU) None of the four Constitutional methods has been used since the Constitution's adoption in 1993. In 1998, Parliament approved a bill by a three-fifths vote authorizing early elections, and then-President Vaclav Havel signed the bill into law. There were no complaints and the early elections proceeded as scheduled. Perhaps emboldened by the 1998 law, and looking for a quick solution, legislators used the same method this year.

¶6. (SBU) In response to the complaint filed by MP Milos Melcak against this method, Parliament is moving forward with a plan to amend the constitution, in effect adding the method permanently to the constitution. Former Constitutional Court Justice Vojtech Cegl calls this proposed Constitutional amendment a "needed change," though unfortunate in that it is being forced by the current situation. Iva Brozova, Chair of the Supreme Court, has urged a general amendment that would provide guidance not only in the current situation, but also

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in unpredictable future circumstances.

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The Complaint Against the Law  
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¶7. (SBU) The Melcak complaint argues the early elections law passed by Parliament and signed by President Klaus violates the Constitution because the Constitution does not specifically permit it. The complaint states the law changes the rules of free, equal, and open political competition by shortening the four-year term of the Deputies in a way not provided for by the Constitution. This makes it impossible, the argument continues, to exercise the four-year mandate voters gave to the Deputies. Moreover, the change is retroactive, affecting a Chamber that had already been elected, not a future election. The complaint deems this incompatible with principles of a democratic state governed by the rule of law. In sum, the complaint argues the law amounts to interference with a basic function of democratic government.

¶8. (U) The complaint does not argue that Parliament cannot pass a Constitutional amendment authorizing the procedure used this year. Rather, it objects to the "temporary suspension of procedures stipulated in the Constitution and ad hoc replacement by a scheme which benefits those political parties which have the temporary political majority." The complaint also argues that the so-called "opposition agreement" of 1998-2002, resulting from the first use of an extra-Constitutional law to call early elections, had a terrible impact on democratic institutions, and should not be used as a precedent. This is not the first criticism of the 1998-2002 agreement. Erik Tabery, Editor-in-Chief of the esteemed news weekly Respekt, said in his book about the four-year opposition agreement that the agreement made democratic institutions less effective and increased citizens' mistrust of democratic institutions and politics in general.

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Unclear Motives, and an Ex-Justice Minister Attorney  
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¶9. (C) The full story of why Melcak filed the complaint has not emerged. Melcak was elected to the Chamber as a member of the Social Democrats (CSSD), but was later expelled from the party for abstaining during a vote of confidence on the (then) proposed Topolanek government. Melcak's defection helped allow the Topolanek coalition government win Parliamentary confirmation. President Klaus has called Melcak a "stooge" in the drama. Some commentators have mentioned Melcak's attorney, Jan Kalvoda, as a potential instigator of the complaint. Kalvoda was deputy prime minister and minister of justice from 1992 to 1996, and was chairman of the Civic Democratic Alliance (ODA). Details about his role in initiating the complaint are scant, however.

¶10. (C) Comment: The Constitutional Court's decision to review the complaint may be an effort by the judicial branch to reign in its legislative colleagues, while Parliament's fast action in taking up a constitutional amendment is an attempt to fight back. Regardless of motives and legal arguments, part of the Czech election turmoil is rooted in a focus on political expediency: CSSD leader Paroubek's opportunistic overthrow of the Topolanek government in the middle of the Czech EU Presidency; the establishment of a temporary caretaker government as a political band-aid; and a quick-fix election law. End Comment.  
Thompson-Jones